

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LISA ARCARA and
PAUL BANASZAK,

Plaintiffs,

v.

Civil Action No. _____

LTD FINANCIAL SERVICES, L.P.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought in response to Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. § 1337.
3. Venue is proper in this district under 28 U.S.C. §1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

4. Plaintiff Lisa Arcara is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Plaintiff Paul Banaszak, is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
6. Defendant LTD Financial Services, L.P., (hereinafter "LTD") is a foreign limited partnership organized and existing under the laws of the State of Texas and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
7. Defendant regularly attempts to collect debts alleged to be due another.
8. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.

9. All references to “Defendant” herein shall mean the Defendant or an employee of the Defendant.

IV. FACTUAL ALLEGATIONS

10. That Plaintiff Lisa Arcara allegedly incurred a debt. This debt will be referred to as “the subject debt.”
11. That upon information and belief the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
12. That Plaintiff Lisa Arcara allegedly defaulted on the subject debt.
13. That upon information and belief Defendant LTD was thereafter employed to collect the subject debt.
14. That in or about October 2008, Defendant began calling Plaintiff Paul Banaszak, former roommate of Plaintiff Arcara, multiple times on his home telephone in an attempt to collect on the subject debt.
15. That Defendant continued to call Plaintiff Banaszak through January of 2009. In many of the calls, Defendant left a message on Plaintiff Banaszak’s telephone answering machine stating LTD Financial Services was calling for Plaintiff Arcara. Defendant also stated “Please know I am a debt collector,” and that the message was in regards to a debt and any information obtained would be used for that purpose.
16. That after approximately the third telephone message, Plaintiff Banaszak called Defendant and left a voice message on Defendant’s telephone answering machine advising them that Plaintiff Arcara did not reside with him and requesting that they stop calling him.
17. Notwithstanding Plaintiff Banaszak’s information and request described in paragraph 15 herein, Defendant continued to call Plaintiff Banaszak ostensibly seeking to speak with Plaintiff Arcara.
18. That at no time did Defendant mail Plaintiff Arcara notice of the subject debt, as required by 15 U.S.C. §1692g.
19. That as a result of Defendant’s acts Plaintiffs Arcara and Banaszak became nervous, upset, anxious, and suffered from emotional distress.

V. CAUSE OF ACTION

20. Plaintiffs repeat, re-allege and incorporate by reference the allegations contained in paragraphs 1 through 19 above.

21. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:

- A. Defendant violated 15 U.S.C. §1692b(1), 15 U.S.C. §1692b(2), 15 U.S.C. §1692b(3) and 15 U.S.C. §1692c(b) by leaving the messages described in this complaint on Plaintiff Banaszak's telephone answering.
- B. Defendant violated 15 U.S.C. §1692d and 15 U.S.C. §1692d(5) by repeatedly causing Plaintiff Banaszak's home telephone to ring with the intent to annoy, abuse and harass.
- C. Defendant violated 15 U.S.C. §1692g(a) by failing to provide notice of the subject debt to Plaintiff Arcara.

22. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiffs Arcara and Banaszak became nervous, upset, anxious and suffered from emotional distress.

WHEREFORE, Plaintiffs respectfully request that judgment be entered against the Defendant for:

- (a) Actual damages;
- (b) Statutory damages for each Plaintiff pursuant to 15 U.S.C. § 1692k.
- (c) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (d) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiffs demand trial by jury in this action.

Dated: February 3, 2009

/s/Kenneth R. Hiller, Esq.
Kenneth R. Hiller, Esq.
Amanda R. Jordan, Esq.
Law Offices of Kenneth Hiller
Attorneys for the Plaintiff
6000 North Bailey Ave., Suite 1A
Amherst, NY 14226
(716) 564-3288
Email: khiller@kennethhiller.com
ajordan@kennethhiller.com

VERIFICATION OF COMPLAINT AND CERTIFICATION BY PLAINTIFFS

Plaintiffs Lisa Arcara and Paul Banaszak affirm that the following statements are true and correct under penalties of perjury:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorney and believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.

Dated: February 3, 2009

/s/Lisa Arcara
Lisa Arcara

/s/Paul Banaszak
Paul Banaszak